

WYOMING HIGHWAY DEPARTMENT

IBLA 74-22

Decided January 28, 1974

Appeal from decision of District Office, Pinedale, Wyoming, rejecting application for special land use permit (W-39810).

Affirmed.

Public Lands: Generally--Public Lands: Special Use Permits

An application for a special land use permit is properly rejected where the question of ownership of the land on which the appellant wishes to stockpile material has not been finally resolved.

Public Lands: Special Use Permits

Issuance of a special use permit is clearly discretionary, and the Bureau of Land Management may reject an application for such permit if the Bureau's studies of the area show that the use for which the application is made is inconsistent with the Bureau's objectives and programs for public use of the land.

APPEARANCES: Don A. Kinder, District Maintenance Engineer, for the Wyoming Highway Department.

OPINION BY MR. STUEBING

The Wyoming Highway Department has appealed from a decision of the Pinedale District Office issued May 31, 1971, rejecting appellant's application for a special land use permit. The District Manager reached this decision because the ownership of the land in issue has not been resolved, and if it is ultimately

determined that these lands are public lands, a study of the area must be completed before a special land use permit could be issued.

On April 17, 1973, appellant filed an application for a special land use permit to stockpile sand and gravel for use on the public roads. The land in question consists of 26.87 acres within the Snake River omitted lands in Teton County, Wyoming. For several years the county has been issued a free use permit to use the requested areas as a rock quarry. This permit contained stringent stipulations to insure environmental protection and rehabilitation of the area. County operations were scheduled to have been completed in the summer of 1973. A field report submitted by the Bureau states, "[A] case to resolve ownership [of the Snake River omitted lands] is presently in the Department of Justice." The report shows that the land has potential use for several forms of outdoor recreation, including a campground. The site affords a pleasant view of the mountains.

In its statement of reasons for appeal, appellant asserts that the County would still have the permit, but it relinquished it so that the Highway Department could acquire it. It also contends that the Corps of Engineers used the site as a quarry for rip-rap rock on their flood control project some time ago and the ownership question did not affect the Corps. Finally, the appellant urges that the site is necessary for stockpiling materials to maintain and repair roads in this area of concentrated public use. It alleges that the rejection of the permit is a detriment to the traveling public.

The District Manager's rejection was proper. The question of ownership of the area has not been resolved at this time and, consequently, the Bureau has good and sufficient reason not to issue permits for the use of the land. An application which has been rejected by the Bureau of Land Management because of unresolved title claims to the lands in issue will not be suspended to await the indefinite outcome of possible lawsuits. See Georgette B. Lee, 10 IBLA 23 (1973). Also, the fact that the Army and County have used the area in the past is immaterial. Appellant seems to assume that the County's permit would still be effective had it not relinquished the permit. The record shows that the Bureau had decided not to renew the permit prior to its expiration and had so notified the County.

If it is finally determined that the land is under the Department of Interior's jurisdiction, the District Office anticipates that a management framework plan and an environmental analysis

will be completed before any use of the land may be authorized. A special land use permit is not explicitly authorized by any statutory provision. However, under the general authority of the Secretary of the Interior to administer the public lands, it may be issued for a purpose not specifically provided for by existing law. See 43 CFR 2920.0-2. Allen M. and Margery D. Boyden, 2 IBLA 128, 131 (1971); Wilderness Society, v. Morton, 479 F.2d 842, cert. denied, 411 U.S. 917 (1973). Issuance of a special land use permit is clearly discretionary. Allen M. and Margery D. Boyden, supra; Desert Outdoor Advertising, Inc., 2 IBLA 344 (1971). Therefore, it does not necessarily follow that the Bureau will issue a permit if the lands are found to be public domain. Rejection of an application would be proper if the Bureau studies of the area show that the use for which the application is made is inconsistent with the Bureau's objectives in programs for the public use of the area. Allen M. and Margery D. Boyden, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Edward W. Stuebing, Member

I concur:

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Frederick Fishman, Member

MRS. THOMPSON DISSENTING:

While I agree there is discretionary authority to reject this special use permit application, I would not finally do so at this time. The case warrants further consideration of matters raised in the State's appeal and of the alternatives and consequences of the action involved.

This is not an application for a permanent disposal of the land. The granting of a special use permit is a temporary use of the land and the permit may be revoked at will by this Department. The field report in the record indicated certain environmental factors which lend support to the State's view that the application should be granted, as well as reasons for not granting it. As the permit may be limited for a short period of time and may be revoked at will, and as appropriate conditions and stipulations may be required for protection and restoration of the land which has already been put to a related use, I see no immediate adverse effect upon the public in granting such a limited usage. There is simply insufficient information in the record to decide whether the rejection is mandated by public interest considerations.

Therefore, I would remand the case to the Bureau to consult with the State and to consider all factors bearing upon whether the special use permit should be allowed.

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Joan B. Thompson, Member

